IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1877 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GIRISHBHAI J PATEL

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner

MR SJ DAVE, AGP for respondent No.1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 14/06/2000

ORAL JUDGEMENT

1. By way of filing this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue a writ of Habeas Corpus and/or a writ order or direction in the nature of Habeas Corpus or any other

appropriate writ, order or direction, quashing and setting aside the order of detention dated 23-2-2000.

2. The District Magistrate, Sabarkantha at Himatnagar passed an order on February 23, 2000, in exercise of powers under Section 3 (2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (" PBM ACT" for short), detaining the petitioner under the provisions of the PBM Act.

3. The grounds of detention indicate that, during inspection, the petitioner was found to be indulging into activity of converting blue kerosene into white and thereby adversely affecting the supply of essential commodities like kerosene and, therefore, the detaining authority came to conclusion that he is required to be detained under the provisions of the PBM Act in order to prevent him from continuing such activities.

4. The petitioner has challenged the order of detention on various grounds. The main ground is delay in considering representation by the State Government as well as the Central Government and non-application of mind by the authority. Mr. Thakkar, learned counsel for the petitioner has argued that the detention order passed by the District Magistrate, Sabarkantha at Himatnagar is not just and proper. Mr. Thakkar has restricted his arguments to the above point only. It is submitted that the District Magistrate, Sabarkantha at Himatnagar had passed the detention order dated 23-2-2000 and representation was made by the petitioner on 8-3-2000 which was received by the office of the detaining authority i.e. District Magistrate on 10-3-2000. The District Magistrate, Sabarkantha at Himatnagar rejected the said representation on 13-3-2000 and copy of that order has been forwarded to the advocate of the petitioner. He has argued that even as per the above order, before 13-3-2000 the State Government has approved the detention order, and therefore, the representation was not required to be decided by the District Magistrate and it was required to be forwarded to the State Government, but instead of doing so, the authority-District Magistrate decided the representation which is not legal and for which learned counsel for the petitioner has drawn attention of this Court to decision in the case of Navalshankar Ishwarlal Dave and another v. State of Gujarat, AIR 1994 SC 1496 and submitted that the action on part of the detaining authority was beyond authority, which has affected the right of the detenu of making an effective representation. In any case, the

petition, therefore, deserves to be allowed and may be allowed.

5. Whereas on the other hand, the detaining authority has filed the affidavit in reply and categorically stated in paragraph 4 that he received the representation of the petitioner dated 8-3-2000 on 10-3-2000 from the advocate of the detenu and on 13-3-2000 Gujarati documents were supplied to the advocate of the detenu and also given to the detenu. He has categorically stated in his affidavit at paragraph 5 that this office received the representation on 10-3-2000 and 11-3-2000 and 12-3-2000 were public holidays, and therefore, on 13-3-2000 immediately the documents in Gujarati were given to the detenu and also the advocate of the detenu, and therefore, there is no delay in supplying documents. One Mr. R.C.Dhankar has filed counter affidavit on behalf of Union of India and he has also given the relevant dates in paragraph 4 of the affidavit and tried to explain the delay, but the fact remains that the detaining authority has passed the order on 23-2-2000 and he received the representation from the petitioner on 10-3-2000, admittedly after 12 days of passing of the detention order, and therefore, it was his duty to send the same as expeditiously as possible to the authority i.e. to the State Government, but instead of doing so, the detaining authority itself has decided the representation and send the order of representation to the petitioner. Hence, the above point is covered under the abovereferred judgment upon which reliance is put by learned counsel for the petitioner and petitioner is able to succeed only on that point. Therefore, learned counsel for the petitioner has restricted his arguments only on that point and not pressed other points.

6. The detaining authority considered the representation and rejected the same on merits. The detaining authority, in doing so, has exceeded its authority, as once the detention is approved by the Government, the detaining authority become functus officio and it has no authority to revoke or rescind or modify the order. All that the detaining authority can do is to forward the representation to the Government for appropriate decision. In this regard, the decision in the case of Navalshankar Ishwarlal Dave and another (supra) can profitably be considered.

7. The continued detention of the detenu, therefore, would stand vitiated for the above stated reasons. Mr. Thakkar, in view of the above observation, does not press for a verdict on aspect of delay in consideration of the

representation by the State Government.

8. In view of the above discussion, the petition is allowed. The impugned order of detention dated February, 23, 2000, is hereby quashed. The detenu- Girishbhai Jayantibhai Patel is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute with no order as to costs.

14-6-2000 (R.P.Dholakia,J.)

*mithabhai